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April 14, 2011

United States Magistrate Judge Ronald L. Ellis
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Robert Scott v. WorldStar HipHop Inc. et al., Case No. 10-CV-9538 (PKC)(RLE)

Dear Magistrate Judge Ellis:

We represent Defendant Berkeley College in the above referenced action. We write to respectfully request that the Court adjourn the April 21, 2011 initial pretrial conference until after a decision is rendered on Berkeley College's motion to dismiss Plaintiff's complaint. Defendant respectfully submits that there is no basis in law or in fact for Plaintiff's copyright claim asserted against Berkeley College in his pro se complaint and that Defendant Berkeley College should not be required to incur the expense or distraction of discovery until its motion to dismiss is decided.

We also note that co-defendant WorldStarHipHop Inc. has not appeared in this action, and that there is no evidence that it has even been served with the summons and complaint. Thus, without all parties before the Court, it is respectfully submitted that it is premature to hold a conference in this case.

This is the first request to adjourn the conference. No scheduling order has been entered, and, after advising Mr. Scott that we would be making this request, he has consented to the adjournment of the conference and of discovery until the Court decides the motion.

By Endorsed Letter, dated April 4, 2011 (ECF Docket #014, a copy of which is enclosed), Judge Castel set dates for Defendant's motion which will have the motion fully submitted by May 27, 2011. The basis for the motion is set forth in the Endorsed Letter, but may briefly summarized as follows.

Plaintiff, a former student of Berkeley College, was captured on a cell phone video taken by another student engaging in a fight with two female Berkeley College students at the Defendant's New York City campus. Plaintiff was expelled from the college as a result of that incident. Plaintiff alleges in this action that he holds the copyright in the cell phone video and that Berkeley College allegedly violated his claimed copyright when an unidentified "member" of Berkeley College uploaded the video to the co-defendant WorldStarHipHop Inc.'s website.

Berkeley College intends to move to dismiss the complaint on three grounds: (i) the complaint fails to allege facts showing that Plaintiff owns a registered copyright for the video at issue as required by 17 U.S.C. §411; (ii) Plaintiff has not alleged facts showing that Berkeley College is responsible for uploading the video to the internet; and (iii) that Plaintiff alleges no facts that would make Berkeley College liable for any alleged act or omission by co-defendant WorldStarHipHop Inc.

Defendant will support its motion with the record of both an administrative proceeding brought by Plaintiff alleging gender discrimination before the New York State Human Rights Division ("NYSDHR") and an Article 78 proceeding Plaintiff commenced in the New York State Supreme Court against the NYSDHR and Berkeley College to overturn the NYSDHR's determination of no probable cause that the Plaintiff was the subject of any discrimination. The record in those proceedings contain certain admissions and findings demonstrating that Plaintiff has failed to state a claim against Berkeley College in this case.

It is respectfully submitted that Plaintiff is using the legal system to punish Berkeley College for expelling him by bringing multiple actions and proceedings against it. We respectfully request that the Court not condone such conduct by permitting discovery to proceed in this case before the Court has had an opportunity to determine whether Plaintiff has stated a claim against Berkeley College.

It is, therefore, respectfully submitted that, for the foregoing reasons and based on Plaintiff's consent, the Court grant this request to adjourn the initial pretrial conference in this matter and to stay discovery pending a decision on Defendant's motion to dismiss.

Respectfully,

David F. Bayne

cc: Robert Scott, pro se (By e-mail to RobertScott117@GMail.com and robertscott117@live.com and by U.S. Mail)

SO ORDERED

4-15-11

MAGISTRATE JUDGE RONALD L. ELLIS

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